In the High Court of Judicature at Madras

Dated: 15.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Appeal No.2602 of 2004

The Managing Director,
Tamil Nadu Housing Board,
493, Anna Salai,
Nandanam,
Chennai-600 035. ..Appellant/Respondent No.2.

..vs..

1. S.Paramanandam
2. V.Sarangapani
3. Vedanesan
4. The Government of Tamil Nadu,
   rep.by its Secretary,
   Housing and Urban Development Dept.,
   Fort St.George,
   Chennai-600 009. ..Respondents/Petitioners &
   Respodnent No.1.

Writ Appeal filed under Clause 15 of the Letters Patent, against the Order passed in W.P.No.3559 of 2004 dated 03.03.2004.

W.P.No.3559 of 2004:

Petitiion under article 226 of the constitution of India to issue a Writ of Mandamus dircting the respondents to reconvey the lands situated in S.No 454 measuring 1.33 acres, 455-1 measuring 1.62 acres, 450-1 measuring 0.77 acres, 456 -2 measuring 0.57 acres in Mogappair Village Ambattur Taluk, Thiruvallur District to the petitioner herein.

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For Appellant : Mr.S.Kasikumar for
Mr.K.Chelladurai

For Respondents : Ms.I.N.Sujatha for R1 to R3

Mr.A.Edwin Prabhakar,
Govt.Advocate for R4

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JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.,)

The above Writ Appeal is directed against the Order of the learned single Judge dated 03.03.2004 made in W.P.No.3559 of 2004, in and by which, the learned Judge, directed the writ petitioners to pay compensation amount received by them together with interest at 9% per annum and after repayment, the respondents were directed to reconvey the properties within a period of one month.

2. The present appeal is filed by the Managing Director, Tamil Nadu Housing Board, second respondent in the writ petition.

3. Heard the learned counsel appearing for appellant as well as respondents including contesting respondents 1 to 3 / writ petitioners.

4. The main grievance of the learned counsel appearing for the appellant Housing Board is that without notice to the Housing Board and hearing their objections, the learned Judge issued a mandamus for reconveyance at the admission stage itself.

5. We verified the Order dated 03.03.2004. Though the order shows that one Mr.S.Venkatesh, Additional Government Pleadder appeared for the respondents, it is not clear whether the said Additional Government Pleader received any instructions from the Tamil Nadu Housing Board and the same was conveyed to the learned Judge. We verified from the records that the writ petition was disposed of at the admission stage, without hearing one of the parties, namely, Tamil Nadu Housing Board. It is also brought to our notice by the learned counsel appearing for the appellant Housing Board that all these lands covered in the Scheme along with several lands at Mogappair Village, which belongs to Tamil Nadu Housing Board totally an extent of 32.86 Hec.lands, were utilized for Mogapair Eri Scheme as per the approved layout by the CMDA No.PPD/LO/No.76/90 dated 11.7.90 and PPD/LO/No.7/99 dated 20.12.99 and the scheme was executed during the year 1988 itself.

6. In view of above information, had proper notice been issued to the 2nd respondent therein, namely, Tamil Nadu Housing board, it would be possible for them to highlight their stand and also inform the learned Judge that the lands in question are not available for reconveyance. In view of the order passed at the admission stage without hearing the Housing Board, such information was not brought to the notice of the learned Judge.

7. The practice of allowing a writ petition or issuing positive direction to the respondents without hearing them, particularly, the

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contesting respondent or respondents, has been deprecated in several decisions, vide Director of Handloom and Textiles ..vs.. K.Venkatesan (1998-1- L.W.page 152 and RM.Muthuveerappan etc. ..vs.. Government of Tamil Nadu, 2. Registrar, High Court, Madras etc. 1997 W.L.R. Page 360.

8. In view of our discussion, we have no other option except to interfere with the order of the learned Judge. Accordingly, the order dated 03.03.2004 made in W.P.No.3559 of 2004 is set aside and the matter is remitted to the learned single Judge for disposal on merits. After restoration, the 2nd respondent-Housing Board is permitted to file a counter affidavit, conveying their stand and thereafter, the writ petition has to be disposed of, on merits, after affording opportunity to all the parties. With the above direction, the writ appeal is allowed. No costs.

gl

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To

1. The Secretary to Government,
   Housing and Urban Development Dept.,
   Fort St.George,
   Chennai-600 009.

2. The Managing Directo,
   Tamil Naud Housing Board,
   No. 331, Anna Salai Chennai-35.

3. The Section Officer,
Writ Section,
High Court, Madras.

+ One cc to K. Cheladurai Advocate SR 63016.
+ One cc to the Govt Pleader SR 62936.

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